

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

**TUESDAY, THE 26TH DAY OF JUNE 2012/5TH ASHADHA
1934**

WP(C).No. 33063 of 2007 (J)

PETITIONER(S):

**P.SREE DEVI,SUPERINTENDENT,KALAMASSERY
MUNICIPALITY AND PUBLIC INFORMATION OFFICER,
KALAMASSERY
MUNICIPALITY,KALAMASSERY,CHANGAMPUZHA
NAGAR P.O,PIN- 682 033.**

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY

SMT.N.SANTHA
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SRI.JOVY GEORGE VARGHESE

RESPONDENT(S):

**1. STATE INFORMATION COMMISSION,KERALA,
PUNNAN ROAD,THIRUVANANTHAPURAM-695 039.**

REPRESENTED BY ITS SECRETARY

**2. THE DIRECTOR OF URBAN AFFAIRS,
PUBLIC OFFICE BUILDINGS, OPPOSITE TO MUSEUM,VIKAS
BHAVAN,THIRUVANANTHAPURAM, PIN-695 033.**

**3. KALAMASSERY MUNICIPALITY,CHANGAMPUZHA
NAGAR P.O, ERNAKULAM DISTRICT,PIN-682 033**

REPRESENTED BY ITS SECRETARY.

**4. P.G.THOMAS, S/O.GEORGE, PUTHUVEETIL
HOUSE,MOOLEPPADAM, KALAMASSERY P.O**

ERNAKULAM, DISTRICT,PIN- 683 104.

**5. SABU JOSEPH,S/O.V.M.JOSEPH,
VATTOMTHOTTIYIL, MOOLEPPADAM, KALAMASSERY P.O
ERNAKULAM DISTRICT PIN-683 104.**

**6. M.C.UTHUP,MUNDACKAL HOUSE, MOOLEPPADAM,
KALAMASSERY P.O,ERNAKULAM DISTRICT,PIN-683 104.**

MJL

**7. SEBASTIAN P.J,PUTHENPURACKAL,MOOLEPADAM,
KALAMASSERY P.O, ERNAKULAM DISTRICT,PIN-683 104.**

**R1 BY ADV. SRI.M.AJAY, SC, STATE INFORMATION
COMMISSION**

R3 BY GOVERNMENT PLEADER SRI.M.K.ABOOBACKER, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/06/2012,

THE COURT ON 26/06/2012 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1 : TRUE COPY OF THE APPLICATION DATED
16/11/2006**

**EXT.P2 : TRUE COPY OF THE NOTICE NO.G2-786/05
DATED 20/1/2007**

**EXT.P3 : TRUE COPY OF THE LETTER NO.G2-786/05
DATED 22/02/2007**

**EXT.P4 : TRUE COPY OF THE PETITION DATED
9/2/2007 FILED BY THE**

**RESPONDENTS 4 TO 7 BEFORE THE 1ST
RESPONDENT**

**EXT.P5 : TRUE COPY OF THE LETTER NO.999/SIC -
GENL/2007 DATED**

18/06/2007 OF THE FIRST RESPONDENT.

**EXT.P6 : TRUE COPY OF THE LETTER NO.G2-786/05
DATAED 28/06/2007**

**EXT.P7 : TRUE COPY OF THE REPORT SENT BY THE
SECRETARY OF THE**

MUNICIPALITY TO THE FIRST RESPONDENT.

**EXT.P8 : TRUE COPY OF THE AFFIDAVIT FILED BY
THE PETITIONER**

BEFORE THE 1ST RESPONDENT

**EXT.P9 : TRUE COPY OF THE ORDER NO.999/SIC-
G1/2007 DATED 27/09/2007**

OF THE 1ST RESPONDENT

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P A TO JUDGE

MJL

A.M.SHAFIQUE, J

*** * * * ***

W.P.C.No.33063 of 2007

Dated this the 26th day of June 2012

J U D G M E N T

The petitioner challenges Ext.P9 order passed by the State Information Commission imposing a fine of Rs.16,750/- on the petitioner, for not providing the information to the party respondent within the time as prescribed under the Right to Information Act 2005 (hereinafter referred to as the Act.)

2. The facts involved in the case discloses that by Ext.P1 dated 16/11/2006 respondents 4 to 7 sought for certain information which was replied by the Public Information Officer as per Ext.P2 dated 20/01/2007 informing the petitioner that the file in connection with the said dispute was handed over to the Advocate appearing for the Municipality in connection with the writ petition and since the files were received back, on payment

of the requisite fee the information could be given. In furtherance of the same by letter dated 22/2/2007 the Secretary had given a reply explaining these facts to the Director of Urban Affairs. It seems that by Ext.P4 dated 09/02/2007 the party respondents had complained of non-receipt of the information to the Chief Information Commissioner. Hence proceedings were taken by the Chief Information Commissioner. Exts.P7 and P8 are the replies given by the petitioner explaining the reasons for not providing information when it was requested as per Ext.P1. However, it is seen that the information was provided on 27/02/2007.

3. By Ext.P9 the 1st respondent came to a conclusion that though the files were with the counsel appearing for the Municipality before the High Court, no steps have been taken by the Information Officer to take the files back in order to give information as provided. On this basis the fine is imposed.

4. Heard learned counsel for the petitioner and the 1st respondent. It is contended by the learned counsel appearing for the petitioner that respondents 4 to 7 themselves have filed a writ petition before the High Court as W.P.C.No.29940/2006 on

13/11/2006 and thereafter it was on 16/11/2006 by Ext.P1 that the application for information was filed before the Municipality with reference to the very same subject matter involved in the writ petition. It is their case that when the files are handed over to the counsel appearing for the Municipality in the matter and when the matter was being heard by the High Court, it is not possible to take back the file immediately and provide the information as stated in Ext.P9.

5. On the other hand, Sri.M.Ajay, learned counsel for the 1st respondent has contended that if persons like the petitioner does not take necessary action to provide information as contemplated under the provisions of the Act, the very purpose of the Act will be defeated. It is contended that it was well within the powers of the State Information Commission to impose penalty on the public Information Officers, if within the time specified under Section 7(1), the information sought for is not provided. Section 20 gives such power to the 1st respondent. However, while exercising such power, it has to be seen that the information was not given within the specified time and without any reasonable cause. The point involved is whether non-availability of the file with the Municipality was a reasonable cause or not.

6. In this case, it can be seen that respondents 4 to 7 filed a writ petition before the High Court on 13/6/2007 and then a request for certain information was made on 16/6/2007. In all probability, the file in this connection would be transferred or given to the learned counsel appearing for the Municipality in the matter. The 1st respondent does not appear to have any doubt regarding the genuineness of such a statement by the petitioner. But, in the impugned order, it is stated that no steps were taken by the petitioner to take back the file from the Counsel for Municipality. It is further stated that there is no material to indicate that the petitioner had informed respondents 4 to 7 that the files were with the counsel and that no steps were taken to take back those files. It is a case where the 1st respondent comes to a conclusion that the petitioner had not taken effective steps to provide the information to respondents 4 to 7.

7. No doubt, the purport of the Act is to see that all public authorities do carry out their public functions in a transparent manner. The very purpose of the Act is to achieve the object of providing information to citizens so that one will have the requisite information regarding the steps taken by the public authority in any matter relating to their public functions except those materials which are specifically exempted from the

provisions of the Act. In that view of the matter, it is for the concerned Public Information Officer to carry out their functions in accordance with the provisions of the Act. If there is any delay in providing the information, for any reason whatsoever, definitely the applicant ought to have been informed about the reason for the delay. But, apparently, in this case, no such document is seen produced by the petitioner before the 1st respondent.

8. Still, while imposing penalty on a Public Information Officer, it is the duty of the 1st respondent to verify whether there was any reasonable cause for the delay in providing such information. The fact that a writ petition was filed by respondents 4 to 7 is not in dispute. The fact that instructions are to be given to the learned counsel appearing for the Municipality before the High Court with reference to the very same subject matter is also not in dispute. Therefore, it cannot be doubted regarding the genuinity of the contention urged by the petitioner in so far as entrustment of the file to the Counsel for the Municipality is concerned. The only mistake which had been committed by the petitioner is not informing the applicant regarding the delay in providing the information. But, it appears

that, the explanation given by the petitioner is possible under the circumstances. It cannot be stated that the delay in providing the information was without any reasonable cause. There was a cause which was reasonable; but could not be properly explained or necessary materials could not be placed for the same. In such event, taking into consideration the facts and circumstances of the case, I do not think that imposition of penalty on the petitioner can be justified. I am of the view that penalty imposed by Ext.P9 is liable to be set aside.

In the above circumstances, the writ petition is allowed and Ext.P9 is quashed.

(sd/-)

(A.M.SHAFIQUE, JUDGE)

jsr

THOMAS.P.JOSEPH,J

CrI.M.C.No. of 200

ORDER

19/01/2011